

## **EXHIBIT B**

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

-----x  
STONINGTON PARTNERS, INC., a  
Delaware Corporation, STONINGTON  
CAPITAL APPRECIATION 1994 FUND  
L.P., a Delaware Partnership  
and STONINGTON HOLDINGS, L.L.C.,  
a Delaware limited liability  
Company,

Plaintiffs,

vs. No. 04-CV-10411  
(PBS) Consolidated

DEXIA, S.A. and DEXIA BANK  
BELGIUM (formerly known as  
ARTESIA BANKING CORP., SA),

Defendants.

-----x  
GARY B. FILLER and LAWRENCE  
PERLMAN, Trustees of the TRA  
Rights Trust,

Plaintiffs,

vs. No. 04-CV-10477  
(PBS) Consolidated

DEXIA, S.A. and DEXIA BANK  
BELGIUM (formerly known as  
ARTESIA BANKING CORP., SA),

Defendants.

-----x  
(Caption continues on the following page.)

Job No: 192557

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-----x  
 JANET BAKER and JAMES BAKER,  
 JKBAKER LLC and JMBAKER LLC,  
 Plaintiffs,  
 vs. No. 04-CV-10501  
 (PBS) Consolidated  
 DEXIA, S.A. and DEXIA BANK  
 BELGIUM (formerly known as  
 ARTESIA BANKING CORP., SA),  
 Defendants.  
 -----x

VIDEOTAPED DEPOSITION OF DAVID LARUE  
 New York, New York  
 Wednesday, March 21, 2007

Reported by:  
 LESLIE FAGIN  
 JOB NO. 192557

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# APPEARANCES:

BOIES, SCHILLER & FLEXNER LLP  
 Attorneys for Plaintiffs  
 255 South Orange Avenue  
 Suite 905  
 Orlando, Florida 32801  
 BY: GARY K. HARRIS, ESQ.  
 KAREN DYER, ESQ.

CLIFFORD CHANCE  
 Attorneys for Defendants  
 31 West 52nd Street  
 New York, New York 10019  
 BY: JEFF BUTLER, ESQ.  
 ANDREAS FRISCHKNECHT, ESQ.

ALSO PRESENT:  
 NORMAN S. ROTH  
 STEPHANIE HOLLYMAN, Videographer

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March 21, 2007  
 9:15 a.m.

Deposition of DAVID LARUE, held at  
 the offices of Boies, Schiller & Flexner  
 LLP, 575 Lexington Avenue, New York, New  
 York, pursuant to Notice and Federal  
 Rules of Civil Procedure, before Leslie  
 Fagin, a Notary Public of the State of  
 New York.

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IT IS HEREBY STIPULATED AND AGREED,  
 by and between the attorneys for the  
 respective parties herein, that filing  
 and sealing be and the same are hereby  
 waived.

IT IS FURTHER STIPULATED AND AGREED  
 that all objections, except as to the  
 form of the question, shall be reserved  
 to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED  
 that the within deposition may be sworn  
 to and signed before any officer  
 authorized to administer an oath, with  
 the same force and effect as if signed  
 and sworn to before the Court.

2 (Pages 2 to 5)

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1 THE VIDEOGRAPHER: Good morning.  
2 Here begins videotape No. 1 in the  
3 deposition of David Larue in the matter  
4 of Stonington versus Dexia, Case No.  
5 04-CV-10411 Consolidated, with Filler v.  
6 Dexia, Case No. 04-CV-10477  
7 Consolidated, with Baker v. Dexia, Case  
8 No. 04-CV-10501 in the U.S. District  
9 Court, District of Massachusetts.  
10

11 This deposition is being taken at  
12 Boies Schiller & Flexner in New York and  
13 was made at the request of Karen Dyer of  
14 the law offices of Boies Schiller in  
15 Orlando, Florida.

16 The certified legal videographer is  
17 Stephanie Hollyman here on behalf of  
18 Esquire Deposition Services located at  
19 216 East 45th Street New York.

20 Would counsel and all present  
21 please identify yourselves and state  
22 whom you represent.

23 MR. HARRIS: Gary Harris, Boies,  
24 Schiller & Flexner for the Baker  
25 plaintiffs.

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1 D. Larue

2 MS. DYER: Karen Dyer, Boies,  
3 Schiller & Flexner for the Baker  
4 plaintiffs.

5 MR. BUTLER: Jeff Butler, Clifford  
6 Chance, representing Dexia Bank Belgium.

7 MR. FRISCHKNECHT: Andreas  
8 Frischknecht, also of Clifford Chance,  
9 representing Dexia Bank Belgium.

10 DAVID LARUE, called as a  
11 witness, having been duly sworn by a  
12 Notary Public, was examined and testified  
13 as follows:

14 EXAMINATION BY

15 MR. HARRIS:

16 Q. Could you please state your full  
17 name and business address for the record?

18 A. My name is David Wayne Larue. My  
19 address is 1358 Hunters Field Close, Keswick  
20 Virginia 22947.

21 Q. And what business is located there?

22 A. That's my home residence. It's  
23 also where I have my home office.

24 Q. Is that the only place at which you  
25 are employed?

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1 D. Larue

2 A. No, sir. I work at the University  
3 of Virginia as an associate professor, that's  
4 University of Virginia, McEntyre School of  
5 Commerce in Charlottesville, Virginia.

6 Q. Do you have an address on campus?

7 A. Room 251, Monroe Hall.

8 Q. Sir, do you prefer to be addressed  
9 as doctor or mister today?

10 A. Either.

11 Q. Mr. Larue, I will hand you a  
12 document that I will ask the court reporter  
13 to mark as Larue Exhibit 1 and ask if you can  
14 identify this for me.

15 (Curriculum vitae of David Larue  
16 marked Larue Exhibit 1 for  
17 identification.)

18 A. Yes, this appears to be a printout  
19 of the University's website description of --  
20 brief description of my background.

21 Q. You have seen this website before?

22 A. I have.

23 Q. To the best of your knowledge, is  
24 it accurate?

25 A. I haven't looked at it in quite

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1 D. Larue

2 sometime, but I have every reason to believe  
3 it would be accurate.

4 Q. Did you participate in preparing  
5 Larue Exhibit 1?

6 A. I did, yes.

7 Q. Did you review it prior to its  
8 being posted on the University of Virginia's  
9 website?

10 A. I don't recall whether I did or  
11 not, it's been a while.

12 Q. Is it fair to say in this  
13 description of yourself and your professional  
14 activities, that it identifies those  
15 experiences in your career that you want  
16 people to know about?

17 MR. BUTLER: Objection to form.

18 A. It includes excerpts from my  
19 resume.

20 Q. How did you decide which excerpts  
21 from your resume to post on the University of  
22 Virginia's website?

23 A. The University for all faculty  
24 members they typically have a brief summary  
25 your professional activities, background and

3 (Pages 6 to 9)

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1 D. Larue  
2 then selected publications, so whatever their  
3 format was that's the format that was  
4 followed here.

5 Q. But, perhaps my question wasn't  
6 clear. You said it is excerpts of your  
7 resume?

8 A. Yes, sir.

9 Q. How did you decide which portions  
10 of your professional activities did you -- to  
11 list on the University of Virginia website?

12 A. Well, the website, there is a page  
13 restriction of some sort, so you just provide  
14 your resume and I think maybe a couple of  
15 descriptions. They make a decision as to  
16 what to put up there and whatnot.

17 Q. So you didn't decide which  
18 activities to include within the website from  
19 your resume?

20 A. Gosh, that's a -- it's been a  
21 while. I just gave them a summary of my  
22 background and a copy of my resume, they made  
23 a decision as to how to format that and what  
24 information to include that was consistent  
25 with the information that had been presented

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1 D. Larue  
2 for other faculty members.

3 Q. Did that summary that you provided  
4 include a summary of your professional  
5 activities?

6 A. I see here that it does, yes.

7 Q. And it does not include all of your  
8 professional activities, correct?

9 A. That's correct.

10 Q. How did you decide which  
11 professional activities to include in your  
12 summary and which to not include?

13 MR. BUTLER: I object. I think he  
14 answered that question.

15 You can answer.

16 A. I don't recall.

17 Q. Are you a certified public  
18 accountant?

19 A. No.

20 Q. Are you a certified fraud examiner?

21 A. No, sir.

22 Q. Let me hand you a document which we  
23 will mark as Larue Exhibit 2 and ask if you  
24 can identify it for me.

25 (Form 10-K marked Larue Exhibit 2

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1 D. Larue

2 for identification.)

3 A. This is, reading from the cover  
4 page, this is the Form 10-K filed by  
5 Microstrategy Corporation with the SEC and it  
6 appears to be for the fiscal year ending  
7 December 31, 2006.

8 Q. And are you currently a director of  
9 Microstrategy Incorporated?

10 A. Yes, sir, I'm an outside director.

11 Q. You were a director at the time  
12 that Larue Exhibit 2 was filed with the SEC?

13 A. Yes, sir, I was.

14 Q. Did you sign Larue Exhibit 2?

15 A. Yes, sir.

16 Q. And prior to signing it, did you  
17 read it?

18 A. Yes, sir.

19 Q. Did you understand it?

20 A. Yes, sir.

21 Q. Was there anything in there you  
22 didn't understand?

23 A. I don't recall that there was.  
24 It's a lengthy document.

25 Q. You would, as a director, if there

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1 D. Larue

2 was something in the 10-K you didn't  
3 understand, you would ask someone to explain  
4 it to you?

5 A. If I was concerned about it, yes, I  
6 would.

7 Q. Do you recall asking anybody to  
8 explain anything in Larue Exhibit 2 to you  
9 before you signed it?

10 A. Well, that's the -- we have audit  
11 committee meetings and board of directors  
12 meetings over which we go through drafts of  
13 the 10-K.

14 During those meetings, we discuss  
15 various members of the board and the audit  
16 committee discuss various issues with  
17 management, with the CEO, with external  
18 auditors with the internal control folks and  
19 we discuss a variety of issues. The meeting  
20 pretty much lasts the better part of the day.

21 Q. And so prior to your signature, you  
22 had reviewed drafts of the 10-K?

23 A. That's correct.

24 Q. And you had an opportunity to fully  
25 understand it, correct?

4 (Pages 10 to 13)

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A. I had an opportunity to understand it to the degree that I needed to understand it, yes.

Q. If you turn to what is labeled at the top page 58 of 96, but, internally, it is page 51 of Larue Exhibit 2?

A. Yes, sir, I'm there.

Q. Do you know what this is?

A. This is the report of the independent registered public accounting firm.

Q. And is it your understanding that such a report is required with regard to all public companies?

A. Public companies that are required to file with the SEC, yes.

Q. So this is not an unusual document for you to have seen?

A. Not at all.

Q. Is this type of document that is reflected on pages 51 and 52 of the internal and 58 and 59 of '96 have a shorthand name in the profession?

A. This is the auditor's report.

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Q. The auditor's report?

A. The auditor's opinion.

Q. Would you prefer I refer to this as an auditor's report or auditor's opinion?

A. Auditor's report is fine.

Q. If I use the term auditor's report throughout the day, you will understand that I am referring to the type of document that is reflected on internal pages 51 and 52 of Larue Exhibit 2?

A. That's correct.

Q. And is the -- Microstrategy's independent registered public accounting firm for the year ending December 31, 2006 was Graham Thorton LLP, correct?

A. Yes, sir.

Q. And they performed certain audit procedures prior to issuing their report, correct?

A. Yes, sir.

Q. Have you ever signed an auditor's report with regard to a public company that is required to file with the SEC?

A. No, sir.

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Q. Have you ever performed an audit relating to a public company that is required to file with the SEC?

A. Are you asking me did I ever participate in the performance of an audit under GAAP for the purposes of preparing financial statements to be filed with the SEC?

Q. Yes.

A. No, I haven't.

Q. Have you ever conducted a fraud examination?

MR. BUTLER: Objection to form.

A. You would have to define fraud examination for me.

In connection with some of the work that I have done as an expert witness, I have conducted a number of forensic analyses primarily in the conduct of civil tax disputes or civil issues dealing with the application of generally accepted accounting principles or economic analysis or other things.

In one case, I did -- in one case,

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the defendant was charged with criminal tax conspiracy, so forensic analysis, yes, I've conducted many of those.

Q. Have you ever conducted a forensic analysis outside of the conduct of a tax investigation?

A. The litigation involved tax issues. My forensic analysis typically involved economic or financial analyses or analyses that were designed to determine the application of generally accepted accounting principles.

Q. Have you ever, just so it is clear, have you ever conducted a forensic examination in any context in which the issues of tax were not present?

MR. BUTLER: I object to the form of the question.

You can answer, sir.

A. No, I believe in the all of the expert witness engagements I've been involved, in the issue in dispute ultimately was a tax issue, so that's outside of the classroom, inside the classroom we use

5 (Pages 14 to 17)

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2 business cases and so forth.  
3 Q. So with regard to non-tax related  
4 forensics examination, it's fair to say that  
5 your experience is limited to classroom, is  
6 that correct?

7 MR. BUTLER: Objection to form.

8 A. I wouldn't agree with that. The  
9 litigation I was involved in had tax issues  
10 that were being litigated. My role in many  
11 of these cases was to opine as to whether or  
12 not generally accepted accounting principles  
13 were applicable or what those principles were  
14 or to do economic analyses or financial  
15 analyses. My role was not to opine on tax  
16 ramifications.

17 Q. Mr. Larue, have you ever conducted  
18 a forensic examination other than as an  
19 expert witness?

20 A. Some time back, I did some due  
21 diligence work in connection with mergers and  
22 acquisitions.

23 Q. And what type of due diligence work  
24 did you do?

25 A. Looking through financial

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1 D. Larue  
2 statements, looking at books and records.

3 Q. And was that -- is it fair to say  
4 your understanding with regard to most  
5 mergers and acquisitions, the buyer and the  
6 seller conduct due diligence?

7 A. Yes, sir, they normally do.

8 Q. Was your due diligence the ordinary  
9 type of due diligence one does with respect  
10 to mergers and acquisitions?

11 A. Ordinary due diligence. I would  
12 say it's customary to do a due diligence  
13 analysis of the financial statements and  
14 books and records and old tax returns and so  
15 forth of the buyer and the seller.

16 Q. Would you consider the due  
17 diligence you did to be a forensic  
18 examination?

19 A. I think I would put that label on  
20 it, yes, sir.

21 Q. So that the investment bankers who  
22 do due diligence in mergers and acquisitions  
23 in your mind do forensic examination of  
24 account statements, is that correct?

25 MR. BUTLER: Objection to form.

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1 D. Larue  
2 A. That may be true. Forensic  
3 examinations are part of the due diligence  
4 process, certainly not the totality.

5 Q. And are there any qualifications  
6 that are required to conduct the type of  
7 forensic examinations that you have described  
8 in the context of due diligence for mergers  
9 and acquisitions?

10 A. When you say, qualifications, I'm  
11 not sure what you mean.

12 Q. Could I do it?

13 A. Do you have a finance accounting  
14 and economics background?

15 Q. Sure.

16 A. If you have the knowledge to be  
17 able to conduct those kinds of analyses, I  
18 think that's what people are concerned about.

19 Q. Okay. So there is no particular  
20 degree or certification that is required that  
21 conduct the type of forensic examination that  
22 you conducted in the context of due diligence  
23 with regard to mergers and acquisitions,  
24 correct?

25 A. When you say, degree required, do

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1 D. Larue  
2 you mean required in a legal sense?

3 Q. Well, it is my understanding, and I  
4 don't know this for sure and we will see this  
5 for sure, can anyone perform brain surgery?

6 A. No, they can't.

7 MR. BUTLER: Objection. This  
8 doesn't make any sense for me. Your  
9 questioning is getting a little bit  
10 ridiculous, but go ahead.

11 Q. And why do you believe that not  
12 everyone can do brain surgery?

13 A. Well, it requires, obviously,  
14 specialized background training and  
15 experience.

16 It also requires, I would guess,  
17 understate law, it requires that you have the  
18 appropriate medical licenses.

19 Q. And is it your understanding that  
20 understate law, certain licenses are required  
21 to perform audits of public companies?

22 A. To express an opinion on the  
23 financial statements under generally accepted  
24 accounting principles, you're generally  
25 required to be a CPA.

6 (Pages 18 to 21)

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Q. And you are not, is that correct?

A. That's correct.

Q. And so in the context -- is there any license that is required by the State, to your knowledge, to be able to perform a forensic examination of the type that you have described with regard to due diligence in the context of mergers and acquisitions?

MR. BUTLER: Can you clarify what state you're asking about?

Q. Any.

A. To perform a forensic analysis?

Q. Of the type that you've described in the context of due diligence work for mergers and acquisitions.

A. I don't believe there is any formal legal requirement for a particular certification or license generally.

Q. Now, other than -- have you ever advised a public company that is required to file with the SEC regarding revenue recognition under generally accepted accounting principles?

A. In my capacity as chairman of the

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audit committee for Microstrategy, I'm involved in the oversight process and work with the CFO, the director of internal controls, with management, the other members of the audit committee, with the external auditors in terms of examining GAAP issues as they apply, among other things, to revenue recognition.

Q. Other than Microstrategy, have you ever provided advice to a public company required to file with the SEC regarding revenue recognition under generally accepted accounting principles?

A. Not directly to a public company, but certainly in conjunction with work that I have done for some of the public accounting firms.

I'm always asked for my advice on various issues that the participants in my classes are involved with.

Q. But that's in the general context of providing advice under an academic structure. I'm talking about with regard to a particular public company.

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D. Larue

A. Not -- let me go back to your predicate.

In an academic context, I would disagree with that. In some of the training programs that I have taught, the people who are in those training programs are partners or managers or senior managers who are working with clients. The questions that they typically ask me are sometimes academic questions, but there are other times -- I have a client who has a particular situation. Let me describe the facts to you and could I get your advice on how this should be handled?

So in that sense, the advice that I render is not to them, is not dealing with academic issues. It's dealing with practical, real world issues that these individuals are facing.

Q. To your knowledge, did the public company authorize those questioners to seek your advice?

A. I have no knowledge one way or the other. Whoever the public company would have

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been, I wouldn't have been notified as to the identity of the public company.

Q. So, to your knowledge, other than Microstrategy, you cannot identify a single public company that you have provided advice to regarding revenue recognition under GAAP, correct?

A. Not that I recall.

Q. And is it fair to say that no public company has ever retained you to provide for the purpose of providing revenue recognition advice?

A. Again, as chairman of the audit committee, that's part of my oversight responsibilities, so in that capacity, yes.

Q. So as the chairman of the audit committee of Microstrategy?

A. That's correct.

Q. Other than Microstrategy, have you ever been retained by a public company to provide it with advice regarding revenue recognition under generally accepted accounting principles?

A. No, sir.

7 (Pages 22 to 25)

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Q. Looking at Larue Exhibit 1, it identifies you as an associate professor of commerce?

A. That's correct.

Q. What is an associate professor?

A. I am an associate professor with tenure at the University of Virginia.

Q. What does associate professor --

A. It's a rank.

Q. Is it the highest range?

A. No, sir.

Q. So the University of Virginia has not bestowed upon you it's highest rank, correct?

A. That's correct. The -- I'm not a full professor. I've never put in my papers to be promoted for full professor. It's an application process that's initiated by the faculty member.

Q. So is taking a certified public accountancy exam, correct?

A. I'm sorry.

Q. You don't become a certified public accountant unless you take an exam, correct?

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A. Correct.

Q. You have to apply to become a certified public accountant?

A. Correct.

Q. And many people who apply to become certified public accountants don't become certified public accountants, correct?

A. I would suspect that's correct.

Q. Mr. Larue, have you ever testified as an expert regarding auditing standards?

A. Regarding auditing standards, I don't believe so.

Q. Have you ever testified as an expert regarding generally accepted accounting principles?

A. Yes, sir.

Q. Have you ever testified as an expert regarding revenue recognition under generally accepted accounting principles?

A. I would say yes.

Q. In what cases did you do that?

A. I would need to look at my resume.

Q. Okay. You don't recall right now?

A. The various cases that I've worked

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on, some involved generally accepted accounting principles and when you say revenue recognition, there are a lot of different issues that are rolled up into the matters that I was testifying on.

Q. And perhaps my question wasn't clear. Let me make it clear.

Have you ever provided expert testimony regarding revenue recognition under generally accepted accounting principles?

A. I have testified and an expert and been recognized as an expert on generally accepted accounting principles as they applied to accounting issues, some of which may have been revenue recognition issues.

Q. I'm asking you which ones.

A. I need to look at my resume.

Q. If any.

A. I don't think I have a listing of all of the cases.

One would be the Tyson Food case that had to do with the application of accounting principles.

Q. What aspect of revenue recognition

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did you provide an expert testimony?

A. That had to do with -- let me think about that. That actually had more to do with the cost accounting principles used by Tyson Foods in computing their revenue, in computing their gross income.

Q. I'm a little confused.

Does cost accounting relate to revenue recognition?

A. It relates to the recognition of income or of net income.

Q. I understand that, but net income is different than revenue, correct?

A. I see what you're getting at.

Q. Is that correct?

A. Yes.

Q. So I'm clear, I'm asking about revenue.

You understand the term in generally accepted accounting principles of revenue?

A. Yes, sir.

Q. It is not net income, is it?

A. No, sir.

8 (Pages 26 to 29)

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2 Q. And cost accounting has nothing to  
3 do with recognition of revenue under  
4 generally accepted accounting principles,  
5 correct?

6 A. Yes. Those are two different  
7 issues.

8 Q. Let's go back.

9 Have you ever provided expert  
10 testimony with regard to revenue recognition  
11 under generally accepted accounting  
12 principles?

13 A. I don't recall.

14 Q. You don't know one way or the  
15 other?

16 A. When you talk about generally  
17 accepted accounting principles, you have a  
18 number of -- in the issues I've dealt with,  
19 there are a number of issues that have  
20 converged that deal with basically the  
21 determination of net income.

22 Q. Well, and that income is -- is the  
23 bottom line on an income statement, correct?

24 A. That's correct.

25 Q. What's the top line?

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2 A. Revenue.

3 Q. On that top line, have you ever  
4 provided expert testimony with regard to the  
5 top line of the income statement, which is  
6 titled Revenue?

7 A. In at least one case, and that  
8 would be -- it's listed in my exhibit. I  
9 gave a deposition. I have not testified at  
10 trial in the Proctor & Gamble case.

11 Q. Do you have a copy of that  
12 deposition?

13 A. I may have a copy.

14 Q. Would you be kind enough to provide  
15 it to me?

16 MR. BUTLER: You don't have to  
17 answer that. It has never been  
18 requested before. We will take your  
19 request under advisement.

20 Q. What was your testimony with regard  
21 to revenue recognition with regard to Proctor  
22 & Gamble?

23 A. That case involved the appropriate  
24 accounting treatment of the timing of  
25 revenues recognized on certain transactions

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1 D. Larue

2 between the enterprise and certain parties  
3 related to that enterprise.

4 This case also involved an opinion  
5 on the timing of the recognition of cost of  
6 goods sold and net income.

7 Q. Other than the Proctor & Gamble  
8 testimony, have you ever provided expert  
9 testimony with regard to revenue recognition,  
10 the top line on an income statement under  
11 generally accepted accounting principles?

12 A. I don't believe so. I don't  
13 recall.

14 Q. Mr. Larue, you previously testified  
15 that in certain of your work as an expert,  
16 you have conducted forensic examinations,  
17 correct?

18 A. Yes, sir.

19 Q. Have any of those forensic  
20 examinations related to whether or not  
21 certain dollar amounts were properly  
22 classified as revenues rather than capital  
23 assets?

24 A. Revenues classified -- say that  
25 again. Certain dollar amounts classified as

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1 D. Larue

2 revenues rather than capital assets?

3 Q. Yes.

4 A. I had one case where the issue was  
5 expenses versus capital assets. I don't  
6 recall.

7 Q. Nothing comes to mind now?

8 A. Again, in some of these cases, I  
9 did an economic analysis to determine  
10 revenue, how much revenue was economically  
11 realized. I don't recall whether I opined  
12 whether or not that revenue would have been  
13 recognized under GAAP.

14 Q. In any of the forensic examinations  
15 that you have engaged in as an expert, did  
16 any involve dollar amounts that were claimed  
17 as revenues rather than as expenses?

18 A. In some of the cases there was a  
19 claim that the enterprise had revenues that,  
20 in fact, they didn't have, but in terms of  
21 reclassifying expenses as revenues, I don't  
22 recall specifically that I've ever addressed  
23 that issue in an expert witness report.

24 Q. What about reclassifying revenues  
25 as expenses?

9 (Pages 30 to 33)

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2 A. Reclassifying revenues as expenses,  
3 I don't recall that I've ever addressed that  
4 issue in a forensic analysis. I may have,  
5 but I don't recall that I did.

6 Q. Mr. Larue, how does one -- how  
7 should a public company that files with the  
8 SEC account in its financial statements for a  
9 fraudulent transaction?

10 MR. BUTLER: Objection to form.

11 A. That depends on the facts and  
12 circumstances. You would have to be a lot  
13 more specific in terms of what kind of a  
14 transaction you're referring or the  
15 materiality, what kind of -- at what level  
16 was the fraud committed, what type of fraud  
17 was it, whether or not a restatement of  
18 earnings or some dollar amount in the  
19 financial statements themselves should be  
20 reclassified or omitted or whether or not  
21 there should be disclosure. That's a  
22 statement that you really can't answer in the  
23 abstract.

24 Q. Let me ask you -- let me try to  
25 fill in some of those details.

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1 D. Larue

2 Consider the following  
3 hypothetical: Microstrategy is a software  
4 vendor, is that correct?

5 A. That's correct.

6 Q. Microstrategy's chairman enters  
7 into an agreement in which his brother will  
8 give Microstrategy \$3 million and, in  
9 exchange, Microstrategy, on paper, says we  
10 will provide you with licensing -- we will  
11 provide you with our software and your  
12 employees will work on that software and we  
13 will get 50 percent of your net profits and  
14 that's what the document reflects, but the  
15 president of Microstrategy and his brother  
16 agree orally that the brother will not have a  
17 company, there will be no employees and there  
18 will be no expectation by Microstrategy  
19 because there are no employees and the  
20 brother's company will do nothing, that there  
21 will never be any future revenues from the  
22 brother's company.

23 How should Microstrategy account  
24 for that transaction?

25 MR. BUTLER: Objection to form.

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1 D. Larue

2 If you need to hear it again, we  
3 will have it reread. It's a long  
4 question.

5 A. Let me see if I can distill.  
6 Microstrategy has received \$3 million free  
7 and clear?

8 Q. In reality, yes.

9 A. In reality, yes.

10 In exchange for licenses for which  
11 Microstrategy has no future obligation to  
12 perform any additional services?

13 Q. Correct.

14 A. The \$3 million is received by the  
15 brother of the CEO of Microstrategy?

16 MR. BUTLER: I'm not sure that's  
17 right. The brother is paying  
18 Microstrategy.

19 A. I'm sorry, the brother pays  
20 Microstrategy \$3 million, Microstrategy has  
21 the \$3 million, doesn't have to give it back?

22 Q. Correct.

23 A. And the brother can take that  
24 license and pretty much do with it what he  
25 chooses to do with it, he owns the license.

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1 D. Larue

2 Q. There is a written document that  
3 controls what he can and cannot do with that.

4 MR. BUTLER: You need to clarify  
5 the hypothetical. He is asking, does he  
6 own the license or not?

7 Q. He owns the license with certain  
8 limitations as to use?

9 A. What is that license worth?

10 Q. I don't know.

11 A. If the license is worth \$3 million  
12 and he paid \$3 million for it, whether or not  
13 the brother actually makes a profit on his  
14 own accord exploiting the license agreement,  
15 I don't believe is material to Microstrategy.  
16 The issue of Microstrategy as to whether or  
17 not it has revenue.

18 Q. So how would Microstrategy -- how  
19 should Microstrategy account for that  
20 transaction?

21 A. Well, again, assuming there is no  
22 obligation, there are no side agreements, it  
23 appears to me from what you said and there  
24 could be other qualifying facts and  
25 circumstances, but it appears that

10 (Pages 34 to 37)

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D. Larue

Microstrategy has derived \$3 million worth of revenue from a party related to its CEO.

Q. And so how should -- what is the accounting entry for that transaction?

A. That would be a debit to cash and a credit to revenue from a related party.

Q. And would Microstrategy be obligated in those circumstances to disclose that related party transaction?

A. I believe under FAS 57, certainly Michael Saler, the CEO of Microstrategy, is a related party, he is the majority shareholder, he is also the CEO.

I believe members of the immediate family to the CEO would be considered to be related parties. That amount would normally be disclosed in the footnotes to financial statements and possibly separately stated.

Q. Now, let me change the hypothetical slightly.

It is the exact same fact pattern, only this time, the person agreeing with Microstrategy's CEO is not his brother. He is unrelated to the CEO of Microstrategy and

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D. Larue

A. I need more facts and circumstances.

Q. What fact would you need?

A. One of the requirements under GAAP that the software actually be delivered, was the software delivered?

Q. Yes.

A. If the amount that was paid by the unrelated party was in the form of an account receivable, was collection of that account receivable probably based on an analysis of all of the underlying facts and circumstances? Was the amount and appears to be here, the \$3 million fixed and determinable, was there persuasive evidence of an agreement?

So those are generally the requirements of SOP 97-2. Once those criteria are satisfied, then revenue recognition would generally be appropriate, again, assuming this is a license agreement and not something else.

Q. How would you determine whether it was something else?

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D. Larue

has no interest in Microstrategy.

How then would Microstrategy account for that transaction?

A. Again, assuming this is a licensing agreement and -- assuming that this is an outright sale of a license and there is nothing else going on, then, of course, Microstrategy would have \$3 million worth of revenue once it satisfied all of the criteria set forth by GAAP, generally under SOP 97-2.

Q. On the facts that I have identified, do you have an opinion as to what the proper accounting for that transaction should be by Microstrategy?

A. I believe I just stated that. If Microstrategy sold a license to an unrelated party and it met the criteria under GAAP for revenue recognition, Microstrategy would report the recognition of revenue in the period in which all of those criteria have been satisfied.

Q. Do the facts, as you understand it, from this hypothetical, meet the criteria for revenue recognition under GAAP?

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D. Larue

A. I would begin by looking at the terms of the agreement between these two parties.

Q. Did you look at the terms of the agreement between Lernout and Hauspie and any LDC?

A. I don't recall that I did.

Q. Why not?

A. I was asked to make certain factual assumptions about the facts in this case and I made those assumptions, stated those assumptions in my report and based my opinion on those assumptions.

Q. If those assumptions were to change, your opinion may or may not change, correct?

A. If the assumptions didn't bear out, then there is a possibility that my opinion might change.

Q. Now, in opining about -- did you opine about the propriety of revenue recognition, correct?

MR. BUTLER: Objection to form.

There was not an opinion about whether

11 (Pages 38 to 41)

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1 D. Larue  
 2 revenue recognition was --  
 3 MR. HARRIS: Are you testifying  
 4 today or is Mr. Larue?  
 5 MR. BUTLER: Your question assumes  
 6 a fact that is not true.  
 7 MR. HARRIS: You object and I  
 8 ignore you and we move forward.  
 9 MR. BUTLER: Were you at the  
 10 deposition yesterday? I know that's not  
 11 your firm's policy.  
 12 MR. HARRIS: You are either going  
 13 to play by the rules or we will  
 14 terminate this deposition until you're  
 15 instructed to play by the rules. We  
 16 will not have you giving long speeches.  
 17 We are going to have you objecting to  
 18 form. If you believe my question is  
 19 improper based on its form, okay.  
 20 MR. BUTLER: I know you're new to  
 21 this to case. I will make my  
 22 objections.  
 23 MR. HARRIS: I'm not new to the  
 24 practice of law.  
 25 MR. BUTLER: Sir, just ask your

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1 D. Larue  
 2 questions. I made my objection.  
 3 MR. HARRIS: I've discussed with  
 4 you what is an appropriate and what is  
 5 not an appropriate objection.  
 6 MR. BUTLER: Thank you for the  
 7 education. Just ask this witness a  
 8 question.  
 9 MR. HARRIS: Can you read back the  
 10 question.  
 11 (Record read.)  
 12 Q. Have you opined with regard to the  
 13 proprietary of revenue recognition by L&H in  
 14 this action?  
 15 A. In my report, based on the  
 16 assumptions that I was given, I opined that  
 17 revenue recognition for particular reasons  
 18 was not clearly improper.  
 19 Q. Did you not opine that it was  
 20 proper?  
 21 A. I did not.  
 22 Q. And you did not opine that it was  
 23 not improper, correct?  
 24 MR. BUTLER: I object to the form  
 25 of the question.

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1 D. Larue  
 2 A. I don't believe I opined that it  
 3 was not improper.  
 4 I believe I opined that it was not  
 5 clearly improper based on one particular  
 6 element of the underlying facts.  
 7 Q. Now, with regard to Larue Exhibit  
 8 2, if you could pick that up and I direct  
 9 your attention to the financial statements in  
 10 Larue Exhibit 2.  
 11 A. Do you have a page?  
 12 Q. Sure. We could begin on, for  
 13 example, page 63 of 96, and that particular  
 14 page of Larue Exhibit 2 does not bear an  
 15 internal page number.  
 16 This is titled, this table,  
 17 Microstrategy Incorporated Consolidated  
 18 Statement of Operations, correct?  
 19 A. Yes, sir.  
 20 Q. It also is referred to sometimes as  
 21 an income statement, correct?  
 22 A. Yes, sir.  
 23 Q. And when you signed Larue Exhibit  
 24 2, would you have been satisfied if your  
 25 accountant told you that the revenues

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1 D. Larue  
 2 reflected in Microstrategy's incorporated  
 3 maybe improper, but they're not clearly  
 4 improper?  
 5 MR. BUTLER: Objection to the form  
 6 of the question.  
 7 You can answer.  
 8 A. Would I have objected to the  
 9 financial statement?  
 10 Q. Would you have been satisfied as a  
 11 director of Microstrategy?  
 12 A. I would have to know much more.  
 13 Q. Would you have signed Larue Exhibit  
 14 2 if you understood that the revenues  
 15 reflected in Microstrategy's income statement  
 16 in Larue Exhibit 2 were improper, but were  
 17 not clearly improper?  
 18 A. I believe that all of these  
 19 revenues on these statements are clearly  
 20 proper.  
 21 If the auditors had informed me or  
 22 that the CFO had informed me that some of the  
 23 revenue recognition may have been improper,  
 24 clearly, I would need to know more facts and  
 25 circumstances in order to make a

12 (Pages 42 to 45)

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<p>1 D. Larue</p> <p>2 determination as to whether or not it would</p> <p>3 be appropriate for me, not only to sign the</p> <p>4 return, but as chairman of the audit</p> <p>5 committee to recommend to the board of</p> <p>6 directors that they sign the return.</p> <p>7 Q. Perhaps you didn't hear my</p> <p>8 question. Let me make sure you do or maybe</p> <p>9 my question wasn't clear.</p> <p>10 Would you have signed Larue Exhibit</p> <p>11 2 if you were told that the amount of revenue</p> <p>12 reflected in Microstrategy's income statement</p> <p>13 in Larue Exhibit 2 was improper, but it was</p> <p>14 not clearly improper?</p> <p>15 A. Again, I would need to know more.</p> <p>16 Q. And it is your understanding as a</p> <p>17 director of Microstrategy that it is</p> <p>18 permissible for Microstrategy to file with</p> <p>19 the SEC, financial statements that it knows</p> <p>20 are improper, but not clearly improper?</p> <p>21 A. That's not my understanding.</p> <p>22 Q. So is it your understanding that</p> <p>23 Microstrategy cannot file with the SEC</p> <p>24 financial statement that it knows are</p> <p>25 improper?</p>	<p>1 D. Larue</p> <p>2 it won't be clear.</p> <p>3 Q. Let me restate it. I would like</p> <p>4 you to -- the following hypothetical,</p> <p>5 Microstrategy's CEO enters into an agreement</p> <p>6 in writing with an unrelated person who is</p> <p>7 the president of a corporation such that the</p> <p>8 corporation named Johnny --</p> <p>9 MR. BUTLER: The corporation's name</p> <p>10 is Johnny?</p> <p>11 MR. HARRIS: Yes.</p> <p>12 Q. Johnny provides Microstrategy with</p> <p>13 \$3 million cash and Microstrategy delivers a</p> <p>14 software packages pursuant to the written</p> <p>15 agreement that provides that Microstrategy</p> <p>16 will be -- will receive 50 percent of</p> <p>17 Johnny's net income over the next three</p> <p>18 years.</p> <p>19 Johnny's president also tells</p> <p>20 Microstrategy that he intends never to have</p> <p>21 any employees and does not intend to develop</p> <p>22 any products based upon Microstrategy's</p> <p>23 software. Okay?</p> <p>24 MR. BUTLER: One question: What is</p> <p>25 the nature of the written agreement</p>
Page 47	Page 49
<p>1 D. Larue</p> <p>2 A. Again, it's difficult to answer</p> <p>3 that question simply because there are not</p> <p>4 enough facts and circumstances that you've</p> <p>5 given me.</p> <p>6 What is the materiality of the</p> <p>7 dollar amount? What account balances does it</p> <p>8 effect? Why is it improper? What is the</p> <p>9 reason for its being classified or considered</p> <p>10 to be improper? Who thinks it's improper?</p> <p>11 Does management think it's improper? Does</p> <p>12 the auditors think it's improper? Do they</p> <p>13 have different opinions on the propriety of a</p> <p>14 particular treatment of a particular item?</p> <p>15 Is this a recurring item? Is it something</p> <p>16 that will reverse next year?</p> <p>17 There are an enormous number of</p> <p>18 facts and circumstances that would have to be</p> <p>19 examined and addressed. You can't say in the</p> <p>20 abstract -- I can't answer that question in</p> <p>21 the abstract definitively.</p> <p>22 Q. Let's go back to our hypothetical.</p> <p>23 Do you have it in mind?</p> <p>24 MR. BUTLER: Object to the form.</p> <p>25 The hypothetical evolved over time, so</p>	<p>1 D. Larue</p> <p>2 between the CEO of Microstrategy and</p> <p>3 Johnny?</p> <p>4 Q. The written agreement is between</p> <p>5 Microstrategy and Johnny.</p> <p>6 I believe that you said</p> <p>7 Microstrategy in that situation would book</p> <p>8 that transaction as \$3 million to cash as a</p> <p>9 debit and \$3 million to revenue, correct?</p> <p>10 A. Based on the assumptions that</p> <p>11 you've given me and assuming no other</p> <p>12 relevant facts and circumstances, yes, sir.</p> <p>13 Q. And there would be no requirement</p> <p>14 to disclose any related party transaction,</p> <p>15 correct?</p> <p>16 A. You defined the purchaser as being</p> <p>17 an unrelated party, so assuming your</p> <p>18 definition comports with GAAP, then I would</p> <p>19 agree with that.</p> <p>20 Q. Now, let me add a fact to the</p> <p>21 transaction. The president of Johnny says to</p> <p>22 Microstrategy, this sounds terrific to me, I</p> <p>23 just don't have \$3 million, I have 72,000.</p> <p>24 Do you think I could borrow it someplace and</p> <p>25 Microstrategy's president says, I think you</p>

13 (Pages 46 to 49)

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1 D. Larue  
2 might be able to borrow it from Z Bank.  
3 Okay. The president of Johnny goes to Z  
4 Bank, Z Bank says to him, here is \$3 million,  
5 sounds good to me. He comes back with the  
6 money, gives it to Microstrategy.

7 How would Microstrategy account for  
8 that transaction?

9 A. Again, assuming there are no side  
10 agreements or any other facts and  
11 circumstances from Microstrategy's point of  
12 view, they received \$3 million in cash that  
13 they're not obligated to pay back in exchange  
14 for a license agreement that requires no  
15 substantial future services from an unrelated  
16 party. They would report that as revenue.

17 Q. How about -- let me change the  
18 facts now.

19 The president of Johnny says to the  
20 president of Microstrategy, I don't have \$3  
21 million, I have 72,000 and the president of  
22 Microstrategy says, don't worry, I'll lend it  
23 to you.

24 The president of Microstrategy  
25 lends it to Johnny, Johnny gives the \$3

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1 D. Larue  
2 million in cash to Microstrategy.

3 How should Microstrategy account  
4 for that transaction?

5 A. I would have to know more.

6 Q. What would you have to know?

7 A. I would have to know if there was  
8 any express -- first, as a threshold matter,  
9 would there be any express or implied  
10 obligation on the part of Microstrategy to  
11 reimburse Michael Saler for the loan in the  
12 event that it wasn't repaid by the unrelated  
13 party?

14 Q. No.

15 A. And you're saying the person who  
16 loaned this money to Michael Saler is  
17 actually a 62 percent owner of Microstrategy?

18 Q. I didn't use Microstrategy.

19 MR. BUTLER: You said the CEO of  
20 Microstrategy.

21 Is it your assumption it's a 62  
22 percent owner?

23 Q. Under the hypo, he is the CEO.

24 A. He knows who the CEO is. That's  
25 the problem with your hypothetical.

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1 D. Larue

2 Q. Do you understand my question?

3 A. Looking at the facts I've written  
4 down here, so the CEO has made a personal  
5 loan.

6 Q. To Johnny?

7 A. To the unrelated party.

8 Q. To fund Johnny's license agreement  
9 with Microstrategy, how should Microstrategy  
10 account for that transaction?

11 A. Again, assuming that there --  
12 assuming that the CEO of Microstrategy was  
13 acting in his individual capacity in terms of  
14 making the loan, assuming that he bore all of  
15 the risks and rewards that would result from  
16 making that loan, assuming that there was no  
17 expectation, reasonable or otherwise, that  
18 Microstrategy would reimburse that loan in  
19 the event that it was unpaid, these GAAP  
20 rules are pretty complicated. I'm trying to  
21 sift through them and just make sure.

22 I guess I would also assume there  
23 was a realistic expectation that Johnny would  
24 be able to repay that loan.

25 Q. No, the president of Microstrategy

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1 D. Larue

2 knows he will do nothing, zero, he will have  
3 no employees, there is -- nothing is ever  
4 going to happen with those -- with that  
5 license.

6 MR. BUTLER: That doesn't mean he  
7 can't repay the loan.

8 Q. He has no -- at the time he enters  
9 it, he has no reason to believe that he will,  
10 in fact, be repaid.

11 A. Ever?

12 Q. Ever.

13 MR. BUTLER: That's an important  
14 fact.

15 A. You would have to determine what  
16 the substance of that transaction was, why  
17 did he make that loan to a related party  
18 knowing that he wouldn't be repaid if he  
19 knew, in fact, he wouldn't be repaid, why  
20 would he make a loan to the related party?

21 I don't understand the motivation.  
22 It doesn't seem like a viable hypothetical.

23 Q. He wanted to increase the  
24 revenues -- he did it on the 29th of  
25 September and Microstrategy's third quarter

14 (Pages 50 to 53)

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1 D. Larue  
2 closes on September 30th. He wanted to have  
3 Microstrategy show increased revenues so he  
4 entered into this transaction.

5 How should Microstrategy account  
6 for this transaction?

7 MR. BUTLER: I object to the  
8 question because now you're asking a  
9 totally different question and I ask you  
10 to clarify the year you're talking about  
11 because it may make a difference in  
12 terms of the applicable GAAP, so can you  
13 give a year for this hypothetical?

14 Q. Mr. Larue, are you able to answer  
15 my question?

16 A. Well, are you talking about 1999?

17 Q. Does it matter?

18 A. I don't know if it matters or not.  
19 GAAP changes over time. I, in connection  
20 with my report, I reviewed the GAAP that was  
21 applicable during the period at issue.

22 Q. Let me make sure I understand. Is  
23 it your testimony that in certain years --  
24 let me -- given the facts that I have laid  
25 out for you, could Microstrategy properly

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1 D. Larue  
2 account for that transaction in the same  
3 manner as when the money came right from  
4 Johnny, there was no loan by Microstrategy's  
5 CEO? That is, can Microstrategy book the  
6 transaction that I've described with  
7 Microstrategy's president loaning the Johnny  
8 \$3 million, having no reason to believe that  
9 he would ever be paid back? Can  
10 Microstrategy book that transaction as \$3  
11 million to cash and \$3 million to revenue?

12 MR. BUTLER: Objection to form.

13 A. Again, you said that -- well,  
14 again, you've said that Johnny doesn't intend  
15 to develop the software. That doesn't mean  
16 that Johnny may not sell that software  
17 license to someone else to generate a return  
18 under which Johnny would use the proceeds  
19 from that return or get outside investors to  
20 repay the CEO of Microstrategy.

21 Q. Anything can happen, I agree, but  
22 Microstrategy's president has no reason to  
23 believe that he will ever be repaid.

24 A. Under those facts and, again, I  
25 guess my impression here is that this

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1 D. Larue  
2 transaction, the way you described it  
3 where -- this transaction, the way you  
4 described it, appears to me, because these  
5 are a pretty extreme set of facts and  
6 circumstances, in substance, to be a  
7 contribution to the capital of Microstrategy  
8 by the CEO, in which case, your debit to  
9 cash, the credit would be to owner's equity  
10 section.

11 Q. Why would Microstrategy not be able  
12 to recognize it as revenue rather than paid  
13 in capital?

14 A. Because there is absolutely no  
15 substance to this transaction beyond the CEO  
16 contributing \$3 million in cash to  
17 Microstrategy and the substance of this  
18 transaction under these extreme facts would  
19 seem to indicate this is a contribution to  
20 capital.

21 Q. When you say, substance, what do  
22 you mean?

23 A. Gosh, that's a term that's almost  
24 impossible to define.

25 Q. Is it defined under generally

Page 57

1 D. Larue  
2 accepted accounting principles?

3 A. No, it's not.

4 Q. But you understand what it means?

5 A. No.

6 Q. You don't understand what your own  
7 word meant?

8 MR. BUTLER: Please don't interrupt  
9 the witness.

10 MR. HARRIS: I thought he was done,  
11 sorry.

12 A. When we talk about substance versus  
13 form, of course, I know what substance means.

14 In terms of attempting to define  
15 what facts and circumstances in any  
16 particular situation might be relevant to  
17 determining what the substance of a  
18 transaction is and how that may or may not  
19 vary from the form of a transaction? What  
20 are those facts and circumstances that are  
21 relevant? What facts and circumstances  
22 aren't relevant? How do you weigh and  
23 balance the facts and circumstances that you  
24 determine to be relevant? What qualitative  
25 and quantitative factors go into making that

15 (Pages 54 to 57)

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1 D. Larue  
2 determination and at the end of the day, how  
3 do you conclude that this transaction does or  
4 does not have substance?

5 So what does substance mean? It's  
6 a term that we all have a pretty good  
7 understanding what that term is getting at,  
8 but in terms of detailed principles and  
9 guidelines for the implementation of  
10 substance, oftentimes, those are lacking.

11 Q. Well, I guess my question wasn't a  
12 little -- was a little different and I,  
13 again, apologize if I wasn't clear in my  
14 question.

15 It was my understanding that you  
16 used, in one of your answers, that the  
17 transaction in which you said it should be  
18 paid in capital, you used the term the  
19 substance of the transaction, correct?

20 A. I did.

21 Q. And in using the term -- my  
22 question was, in using the term substance,  
23 did you understand what you meant?

24 A. Yes.

25 Q. Do you believe that others

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1 D. Larue  
2 understood what you meant?

3 MR. BUTLER: Objection to form.

4 Do you mean others in this room?

5 MR. HARRIS: Yes.

6 A. In the context of using substance,  
7 in this context, I think we all know what it  
8 means, have a general idea as to what it  
9 means.

10 Q. Now --

11 MR. BUTLER: I will state for the  
12 record, I don't know what it means.

13 MR. HARRIS: That's why you're  
14 still litigating this case.

15 Q. Now, let's go back to the  
16 hypothetical between Johnny and  
17 Microstrategy's CEO. Microstrategy says --  
18 Microstrategy's CEO says to Johnny's  
19 president, I will personally lend you the  
20 money and then I will go out and look for  
21 investors in Johnny.

22 A. I'm sorry, would you back up and  
23 repeat yourself.

24 Q. Let me start over.

25 You have the fact of the prior hypo

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1 D. Larue  
2 in mind, correct?

3 A. Yes.

4 MR. BUTLER: This fact involved an  
5 actual transfer of a license, in this  
6 hypothetical, there is always a transfer  
7 of a license from Microstrategy to  
8 Johnny, correct?

9 MR. HARRIS: Yes.

10 MR. BUTLER: Go ahead.

11 Q. You said you had the facts of the  
12 prior hypothetical in mind.

13 What I'm changing this time is that  
14 Microstrategy's CEO says to Johnny's  
15 president, I will lend Johnny the money to be  
16 paid to Microstrategy and I will go out and  
17 look for investors in Johnny and if I can  
18 find them, I'll get repaid and if I can't, I  
19 won't.

20 How should Microstrategy account  
21 for that transaction?

22 A. That muddies the water a bit. I  
23 don't know.

24 Q. You don't know?

25 A. I don't know.

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1 D. Larue

2 Q. Good.

3 MR. HARRIS: Should we take a  
4 break?

5 THE VIDEOGRAPHER: We are going off  
6 the record. It's actually 10:24.

7 (Recess.)

8 THE VIDEOGRAPHER: We're going back  
9 on the record. The time is 10:38. This  
10 is tape No. 1.

11 Q. Mr. Larue, you submitted two expert  
12 reports in this matter, is that correct?

13 A. I submitted an opening report and a  
14 rebuttal report, yes, sir.

15 Q. You submitted the opening report in  
16 early January 2007, correct?

17 A. Yes, sir.

18 Q. And it's my understanding that you  
19 submitted your rebuttal report in mid  
20 February 2007, correct?

21 A. Yes, sir.

22 Q. At the time you submitted your  
23 opening report in early January 2007, were  
24 you aware that Dexia -- let me stop.

25 When I use the term Dexia, is it

16 (Pages 58 to 61)

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2 fair to say that you understand that to mean  
3 the defendant, Dexia Bank Belgium?

4 A. Yes, sir.

5 Q. And can we agree that if I use the  
6 term Dexia today, it includes its  
7 predecessors in interest, like Artesia,  
8 Paribas and Bacob?

9 A. Yes, sir, if I can do the same.

10 Q. If you use Dexia, I will understand  
11 you to mean its predecessor in interest, as  
12 well.

13 Is that a fair agreement?

14 A. Yes.

15 Q. So let me go back to your initial  
16 or opening report.

17 At the time you submitted your  
18 opening report in early January 2007, were  
19 you aware that the Belgium authorities had  
20 brought criminal proceedings against Dexia  
21 with regard to its actions related to Lernout  
22 and Hauspie Speech Products?

23 A. I heard that. I don't know.

24 Q. You were aware or you were not  
25 aware?

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2 A. I don't remember where I heard  
3 that. I can't say I know for a fact that I  
4 knew that -- that I knew that for a fact  
5 rather.

6 Q. Did you know that for a fact prior  
7 to today?

8 A. I don't know that for a fact as I  
9 sit here.

10 Are you telling me they had brought  
11 criminal charges against Dexia?

12 Q. Yes.

13 A. Then accepting your statement, I  
14 know it for a fact.

15 MR. BUTLER: I object. There have  
16 not been criminal charges filed in  
17 Belgium.

18 Q. If there were criminal charges  
19 filed against Dexia regarding its activities  
20 in relationship to Lernout & Hauspie Speech  
21 Products, would that change any of your  
22 opinions in your opening report?

23 A. If they brought charges, we are not  
24 talking about a conviction and when you say  
25 activities, you would have to be more

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2 specific, but I don't -- no.

3 Q. Is the same true for your -- with  
4 regard to your opinions in your reply report  
5 or rebuttal report?

6 A. I believe that to be true.

7 You would have to be more specific  
8 in terms of what facts or circumstances  
9 you're referring to.

10 Q. Let me hand you a document that we  
11 will mark as Larue Exhibit 3.

12 (U.S. Securities and Exchange  
13 Commission document marked Larue Exhibit  
14 3 for identification.)

15 Q. Have you ever seen Larue Exhibit 3  
16 before?

17 A. I believe I may have some time ago  
18 and actually there are two documents here,  
19 aren't there?

20 Q. There are, although I think it is  
21 one. It is a press release by the United  
22 States Securities and Exchange Commission  
23 dated October 10, 2002 and attached to it is  
24 a complaint in a civil injunction action  
25 filed by the SEC against Lernout and Hauspie

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2 Speech Products, NV, correct?

3 A. Yes.

4 Q. And have you seen complaints issued  
5 by the SEC against public companies in the  
6 past?

7 A. Yes.

8 Q. So you understand what a complaint  
9 by the SEC is?

10 MR. BUTLER: Objection to form.

11 Are you asking for his legal  
12 understanding of what it is?

13 MR. HARRIS: I asked if he uses it.

14 If he does, he does.

15 A. Injunctive relief, I'm not familiar  
16 with that term.

17 Q. Are you familiar with the SEC  
18 sometimes sues companies?

19 A. I've read through complaints  
20 before, but I don't know anything about  
21 suing.

22 Q. Were you aware prior to -- at the  
23 time you submitted your opening report, that  
24 the SEC had filed an accounting fraud action  
25 against Lernout and Hauspie Speech Products?

17 (Pages 62 to 65)

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A. I believe I had seen this before. That I had reviewed this briefly before I submitted my report.

Q. And if you did, it would be in your list of documents that you considered, correct?

A. I don't know.

Q. Well, if you reviewed it before, why wouldn't it be in the list of documents that you considered?

MR. BUTLER: I object to form.

Are you asking him what the legal standard is in what needs to be included in the expert report? This witness will not know the answer.

MR. HARRIS: He can answer the question.

MR. BUTLER: What was your question? Can I have it reread, please.

(Record read.)

MR. BUTLER: He didn't say he considered it in formulating his opinion.

MR. HARRIS: Are you going to

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I do a lot of reading on a regular basis. Part of that reading includes various publications and pronouncements by the SEC, so when I read that, I honestly don't recall that, but I do recall that I didn't consider this or use this in the preparation of my report.

Q. Now, if you look at the first page of Larue Exhibit 3, there is a section with regard to Dictation Consortium and Brussels Translation Group transactions.

Do you see that?

A. No, sir, I don't.

Q. Larue Exhibit 3.

A. Yes, sir, I do.

Q. Is it your understanding that Dexia loaned money to one or both of Dictation Consortium and Brussels Translation Group?

A. I haven't read this document recently. I don't know what it says.

Q. Feel free to read it.

MR. BUTLER: He is asking about your understanding, not about what this document says.

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testify?

MR. BUTLER: If I have to.

MR. HARRIS: You can object to the form.

I was very polite the first time, I'm being polite this time. If you object to the form, you should object to the form.

MR. BUTLER: I'm objecting because you're trying to use word play into tricking this witness to answer a legal question and I will not let you do that.

Q. Can you answer the question?

A. What was the question?

Q. If you reviewed the SEC's complaint against Lernout and Hauspie Speech Product prior to the submission of your opening report in January of 2007, why would it not be included in the list of documents that you considered?

A. Well, it certainly wasn't a document I considered in preparing my report and I may have reviewed this before I became involved in the Dexia case.

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A. It's my understanding. I don't know that for a fact, but it's my understanding that loans were made to Dictation Consortium and Brussels Translation Group.

Q. By Dexia?

A. I don't know. I think so.

Q. If you look at the -- that section that relates to Dictation Consortium and Brussels Translation Group, the SEC says in its press release, at the end, it says, "Because the transactions were, in substance,

A. Where are you?

Q. At the very --

A. Here we go.

Q. Because the transactions were, in substance, disguised loans and not sales or service transaction, Lernout and Hauspie should not have recognized revenue from those transactions under generally accepted accounting principles.

A. I see that.

Q. Do you agree or disagree with the SEC's statement?

18 (Pages 66 to 69)

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A. I don't have any basis for agreeing or disagreement. I don't know the underlying facts and circumstances.

Q. Then there is a section that relates to Language Development Companies, correct?

A. Yes, sir.

Q. Are you aware of any Language Development Companies with regard to the dispute in which you are currently an expert?

MR. BUTLER: You mean this dispute?

MR. HARRIS: Yes.

A. Am I aware of them, yes.

Q. Were they special purpose entities?

A. The term special purpose entities isn't defined under GAAP.

Q. You used the term special purpose entities?

A. Not to describe them.

Q. That's my question.

A. The term isn't defined. I guess you can call that special purpose entities. It's not a term that is defined under GAAP.

Q. Did you understand that any of the

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most people would consider to be a special purpose entity and the real issue, I believe -- the reason I put that background in there had to do with whether or not the relationship between entities required that one include the other in their consolidated financial statements. That was the purpose of that discussion.

MR. HARRIS: Can you read that answer back.

(Record read.)

Q. Just so I understand that last question, the real purpose was whether or not Lernout and Hauspie Speech Products needed to consolidate the financials of the LDCs with Lernout and Hauspie?

A. That's correct.

Q. Do you have an opinion as to whether or not the Language Development Companies were special purpose entities?

A. If you'll define what you mean by special purpose entities, I would be glad to tell you whether or not I think they fit into that category.

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Language Development Companies that are identified in your report to be special purpose entities?

A. I don't think I considered whether they were special purpose entities or not.

Again, there is no definition or there was no definition. There still is no definition of special purpose entities in GAAP, so when you talk about a special purpose entity, that may have a different meaning to different people.

Q. Do you know what relevance your discussion of special -- do you believe that your discussion of special purpose entities has any relevance to the dispute in which you're currently testifying?

MR. BUTLER: I object to the form of the question.

Go ahead.

A. I was asked by counsel to discuss the treatment of special purpose entities under GAAP.

-- These particular entities had -- certain characteristics, at least of what

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Once again, you're using a term that doesn't have a precise unambiguous definition under GAAP.

Q. You used the term special purpose entities, did you not?

A. I did under section 3.

Q. As you use the term in section 3 of your report, do you have an opinion as to whether or not the Language Development Companies were special purpose entities?

A. I didn't define the term. I did not set the parameters of what was and was not a special purpose entity in my purpose. There is no special entity to be had.

Q. Do you understand what you meant by special purpose entity when you wrote it in your report?

A. Of course.

Q. But other people's understanding, I take it, could be very different because there is no definition of what special purpose entity means?

A. That's correct. GAAP uses that term, but it doesn't really define the term.

19 (Pages 70 to 73)

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Q. As you use the term and understood it in your report, special purpose entities, do you have an opinion as to whether or not the Language Development Companies were special purpose entities?

A. I don't know.

Q. You don't know, as you sit here today, you don't have an opinion?

A. As I use the term, no, I don't.

Q. No, you don't have an opinion or no, you don't consider them to be?

A. It depends on the facts and circumstances of specific to the LICs in terms of a variety of things and, again, there is no unambiguous definition of what an SPE is.

Q. Based on your knowledge of the Language Development Companies, do you have an opinion, as you sit here today, whether or not the Language Development Companies were special purpose entities, as you use that term in your opening report?

A. I would say that the Language Development Companies certainly had some of

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the characteristics of what typically people would consider to be a special purpose entity and, again, when you say Language Development Companies, there were several different Language Development Companies.

They had different characteristics. They weren't all the same. They were owned by different parties. They were capitalized at different levels. They were formed at different times. There are a number of differences, so you have to be careful that I don't lump them all together when they shouldn't be lumped all together.

Q. Is it your opinion, as you sit here today, that any of the Language Development Companies were special purpose entities, as you used that term in your report?

A. Possibly.

Q. Possibly, you possibly may have an opinion?

A. No, they possibly may have been special purpose entities as I used that term in the report.

I don't have the underlying facts

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and circumstances for all of these entities.

Q. Fair enough.

Now, if you turn to the complaint that is part of Larue Exhibit 3, and I am going to focus your attention to paragraph 16 and I would like you to review paragraph 16 and as much or as little of the complaint, the SEC's complaint or Larue Exhibit 3 as you would like and let me know when you're ready.

MR. BUTLER: Why don't you ask him a question so he knows what he is looking for. He doesn't want to independently review that at all.

Q. With that in mind, I would like you to review paragraph 16.

MR. BUTLER: With what in mind, you haven't asked him a question?

Q. Would you please review paragraph 16 of Larue Exhibit 3.

MR. BUTLER: Okay.

A. Yes, sir. I've read paragraph 16. I may need to read it again.

Q. One of the sentences says, The SEC asserts to bolster its reported revenue. L&H

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want a new and elaborate scheme to, in essence, create additional L&H customers. These new customers, quote, the Language Development Companies, end quote, or LDCs, in quotes, enabled L&H to claim revenue of 100 million in license fees and 8.5 million in prepaid royalties from the LDCs in 1996 and 1997, giving the false impression --

A. I'm sorry, '98 and '99.

Q. 1998 and 1999, giving the false impression of exponential growth.

Do you see that?

A. I do.

Q. Are you aware of any facts or circumstances that would suggest the SEC's statement there is inaccurate?

A. That's a lot of statements.

First of all, let me just, to bolster and scheme, these really look to subjective intent on the part of L&H.

MR. BUTLER: I just want to clarify. You're asking for his understanding of the facts of the case, is he aware of facts, you're not asking

20 (Pages 74 to 77)

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1 D. Larue

2 about his opinion?

3 MR. HARRIS: Correct.

4 A. You stated that in the negative.  
5 Would you repeat the question.

6 Q. Are you aware of any facts that  
7 would make the statements by the SEC that we  
8 just read into the record inaccurate?

9 A. I'm certainly not aware of all of  
10 the facts in this case.

11 I do have an impression that there  
12 are facts that would dictate against a  
13 conclusion, this conclusion. There are facts  
14 perhaps on both sides of the issues. It  
15 looks like they reviewed all of the facts and  
16 came to a conclusion.

17 Q. So I believe that the answer you  
18 gave me was yes, you are aware of certain  
19 facts that would lead -- that would cause the  
20 statements by the SEC to be inaccurate?

21 MR. BUTLER: Objection to form.

22 A. My expert report was based on the  
23 assumptions I stated in the report.

24 In the process of preparing my  
25 report, I did review some of the documents in

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2 Q. And is the answer to that question  
3 you do or you don't have such facts?

4 A. I think there are always facts and  
5 circumstances on both sides of the issue, so  
6 certainly there are going to be facts out  
7 there that would lead in one direction and  
8 other facts that would lead in another  
9 direction and I've seen documents that refer  
10 to some of those facts.

11 Q. And I guess what I'm really asking  
12 you is not to speculate about what facts may  
13 be out there, but what facts -- any facts  
14 that you are aware of, as you sit here today?

15 A. Yes.

16 Q. What are those facts?

17 A. Oh, gosh. There are a number of  
18 facts. I guess one fact would be that it  
19 appears that the technology that was  
20 licensed -- the technology development tools  
21 that were licensed to the LDCs were  
22 functional and capable of performing as  
23 advertised.

24 I believe that the licenses --  
25 license agreements were real, that they

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2 this case, so I've had some exposure to some  
3 of the facts clearly.

4 I think there probably are facts  
5 out there that would dictate that this wasn't  
6 a scheme or this wasn't the purpose behind  
7 the LDCs, that there were other purposes  
8 behind the LDCs perhaps or at least some of  
9 the LDCs.

10 I make the other comment that this  
11 statement refers to all of the LDCs and I'm  
12 unfamiliar with the LDCs. I think there were  
13 about 30 LDCs. They may also be referring to  
14 some of the other entities that were named a  
15 little differently. I'm not familiar with  
16 those other entities or what happened or what  
17 didn't happen.

18 Q. Just so I make sure I understand  
19 the answer, do you have my question in mind?  
20 What question did I ask you?

21 A. You asked me if I was aware of any  
22 facts that would indicate that this  
23 conclusion was wrong.

24 Q. Or inaccurate.

25 A. Or inaccurate.

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2 conveyed certain rights and privileges to the  
3 LDCs. The LDCs had had independent  
4 investors, it's my understanding from the  
5 audit committee report that at least  
6 initially the LDCs, the intention of the LDCs  
7 was to actually develop the language specific  
8 software within the LDC, so those are some of  
9 the facts that would seem to indicate that  
10 the LDCs, at least initially or at least some  
11 of them had purposes that were different from  
12 what's described here.

13 Q. When you say, initially, what do  
14 you mean by initially and which LDCs do you  
15 consider to be initial?

16 A. I don't recall. I didn't look at  
17 specific -- the audit committee report, I  
18 believe, referred to a couple of the LDCs.  
19 There were several LDCs out there.

20 I never really reviewed or  
21 assimilated into my report any of the  
22 specific facts and circumstances about the  
23 activities of the specific LDCs.

24 MR. HARRIS: Can you read that  
25 back.

21 (Pages 78 to 81)

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(Record read.)

Q. Now, you say you never really reviewed the facts and circumstances of the particular LDCs except those four in your report?

A. For each one of the specific LDCs, that's correct. I don't believe information is available for most of them or some of the information.

Q. Is that true, as you sit here today, not limiting it to your report, but you never reviewed the particular facts and circumstances of specific LDCs?

A. All of the facts and circumstances surrounding specific LDCs, no.

Q. Did you review any of the facts and circumstances involving any specific LDC?

A. Well, of course I did.

Q. What facts and circumstances did you --

A. I knew, for example, that Radial had formed three LDCs, LIC had formed four LDCs and LDF had formed, I believe, six LDCs.

Can I ask a question?

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in a District Court. This is what the SEC finally believes to be true and accurate, otherwise, they could not allege it in District Court.

MR. BUTLER: Sir, that is not true. These are allegations. They are no more true than the allegations in this complaint in this case and you are not going to be able to mislead this witness. This is a complaint. A complaint is a complaint. You know what it means, I know what it means. The SEC is often wrong.

I'm sure that Boies, Schiller has defended clients against the SEC and if you want to take the position --

MS. DYER: A consent order was issued here. They copped to all the allegations. Why are you wasting everyone's time?

MR. HARRIS: The SEC reached the conclusion -- if you want to mislead your own witness, you clearly have done that throughout his report process.

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Q. Yes.

A. This says complaint for injunctive relief. This doesn't mean a final determination has been made by the SEC as to the complaint alleged, this is still an allegation, this is not a conclusion or enforcement action on the part of the SEC, is that correct?

It says complaint. Is this something that's been alleged or is this something that -- it says alleges, SEC alleges. Okay, I understand now.

MR. BUTLER: What's the answer to that question? You said he could ask it.

MR. HARRIS: I said he can ask it.

MR. BUTLER: Should you tell him the answer to the question or should I?

MR. HARRIS: Nobody should tell him the answer to the question.

MR. BUTLER: The answer to your question is these are allegations.

Q. These are the final conclusions by the SEC against L&H and they are bringing it

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MS. DYER: If you're going to get on your high horse, why don't you read the consent order before do you so.

MR. BUTLER: If there is a consent order that you want to ask this witness about that I don't think he has ever seen, you can ask him about that, but even a consent order --

MR. HARRIS: I didn't want to ask him about that.

MR. BUTLER: It does not establish the facts in this case and you should not pretend otherwise with this witness. You haven't proven anything at trial yet and so I don't know why you think it's ridiculous for me to suggest that you may have the facts wrong.

MR. HARRIS: Because this is not the time to do it.

MR. BUTLER: I agree it's not the time to do it, but you said he can ask a question and you decided to show him this document.

Go ahead. I don't mean to

22 (Pages 82 to 85)

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2 interrupt.

3 MR. HARRIS: Yes, you do mean to  
4 interrupt and you've been doing it all  
5 morning.

6 I'm going to ask you again to try  
7 to be professional. I understand that  
8 is difficult for you. You have not  
9 demonstrated that here this morning.

10 You are to object to the form and  
11 nothing else. Stop coaching the witness  
12 and stop interrupting the examination.  
13 I have been polite before, but it is  
14 time for you to stop. You understand.

15 MR. BUTLER: I've heard all this.  
16 You told this witness he could ask a  
17 question. It, unfortunately, did not  
18 turn out too well, but why don't you  
19 just ask your next question.

20 Q. Are there any facts and  
21 circumstances -- identify all facts and  
22 circumstances of which you are aware that  
23 would make any statement in paragraph 16 of  
24 Larue Exhibit 3 inaccurate.

25 MR. BUTLER: Objection to form.

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2 A. Again, I did a very limited review  
3 of the facts and circumstances. My report is  
4 based on the assumptions that I made in  
5 formulating my opinion.

6 Q. Mr. Larue, again, I'm going to ask  
7 you if you had my question in mind?

8 MR. BUTLER: Sir, he answered your  
9 question. Ask your next question.

10 Q. What was my prior question?

11 MR. HARRIS: Could you reread his  
12 prior question, please.

13 (Record read.)

14 MR. BUTLER: I think he answered  
15 that question, so you don't have to  
16 answer it again, but if you want to ask  
17 it again, you're free to do so.

18 Q. I believe you didn't answer the  
19 question. I didn't ask you about your  
20 report. I didn't ask what you did or didn't  
21 do.

22 I asked about all facts of which  
23 you are currently aware which would make the  
24 statements in paragraph 16 of Larue Exhibit 3  
25 inaccurate.

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2 MR. BUTLER: I object to the form  
3 of the question.

4 We're not presenting Professor  
5 Larue as an expert on the facts and his  
6 factual assumptions are set forth in his  
7 report, so your question is  
8 inappropriate.

9 Q. You can answer the question now.

10 A. First of all, you're asking me for  
11 all of the facts.

12 I don't remember all of the facts  
13 that I may have been aware of or been exposed  
14 to and, frankly, I don't remember in every  
15 case what are facts or what are things that I  
16 thought might have been facts or had reason  
17 to believe might have been facts, but didn't  
18 know for a fact that they were facts, so, you  
19 know, in my report, I knew that Radial or at  
20 least I understood that Radial had been  
21 formed by a private investor whose name was,  
22 I believe, Van Deun, V-a-n D-e-u-n, and I  
23 believe it was in March of '98, that that  
24 investor had contributed Belgium francs to  
25 Radial, that Radial had formed three LDCs. I

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2 believe it was Turkish, Farci and Bassa.  
3 That the LDCs entered into licensing  
4 agreements with Lernout and Hauspie. The  
5 LICs were formed by Hardeman, I believe,  
6 sometime in 1998 with contributions and other  
7 investors and that LIC formed, I believe,  
8 four LDCs, Czech, Slavic, Polish, Hungarian  
9 and purchased licenses, nonrefundable  
10 licenses from L&H.

11 LDF, I believe, was formed sometime  
12 in '98 or '99 by, among others, an insurance  
13 company in Belgium who made contributions to  
14 the capital and LDF formed, I think, six  
15 LDCs, I think 14 was the total.

16 It's my understanding that Artesia  
17 made loans to the LDCs.

18 What else?

19 Q. Is there any other fact of which  
20 you are aware that you believe makes the  
21 statements in paragraph 16 of Larue 3  
22 inaccurate?

23 MR. BUTLER: Objection to form.

24 A. I can't recall all the facts and  
25 circumstances that I reviewed in connection

23 (Pages 86 to 89)

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2 with preparing my report.

3 I can state that the facts that I  
4 relied upon and the assumption that I relied  
5 upon as represented to me by counsel are  
6 stated clearly in my report.

7 Q. And have we now exhausted, as you  
8 sit here today, all facts of which you are  
9 aware today and can remember that would make  
10 the statements in paragraph 16 of Larue  
11 Exhibit 3 inaccurate in your view?

12 MR. BUTLER: Objection to form.

13 A. No, I don't think so.

14 Q. Please provide those to me.

15 A. One of the problems that I have in  
16 answering your question is that certain facts  
17 I don't know to be facts.

18 I don't know -- I haven't seen  
19 documentation that allows me to independently  
20 make a determination as to what something  
21 that I understood to be the case was, in  
22 fact, a fact of the case.

23 Once again, the facts upon which I  
24 relied and the assumptions on which I relied  
25 are clearly stated in my report as the basis

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2 for the opinions rendered in that report.

3 I can't -- I just can't remember  
4 all of the things -- I can't make the  
5 distinction sometimes between, you know, what  
6 was alleged a fact to have been in one of the  
7 complaints that I reviewed and what is, in  
8 fact, a fact and one of the things that I  
9 have noticed is that oftentimes, people are  
10 pretty careless with the accuracy of the  
11 facts that they assert.

12 Q. Let's move to paragraph 18 of Larue  
13 Exhibit 3.

14 I would ask that you review that  
15 and I am going to direct your attention to  
16 various statements therein.

17 A. All right. I've read it.

18 Q. Now, in paragraph 18, among other  
19 things, the SEC states, The LDC were little  
20 more than shell companies.

21 Do you see that?

22 A. I do.

23 Q. Do you understand it?

24 A. Well, there is no definition as to  
25 what a shell company is. It certainly isn't

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2 defined under GAAP. It's one of the terms  
3 that is used that is subject to various  
4 means.

5 The term shell company is not a  
6 term that is defined anywhere in GAAP  
7 throughout the relevant period, but I have a  
8 general idea as to what they must mean.

9 Q. Okay. What is that understanding?

10 A. Well, it appears that they're  
11 describing companies without -- without  
12 employees or assets, liabilities, business  
13 activities and so forth and let me make a  
14 note that it says more than shell companies,  
15 so they were more than shell companies.

16 And if I could, one other comment.

17 MR. BUTLER: Feel free to finish  
18 your answer.

19 Q. Go on as long as you want. At some  
20 point, you'll answer my questions.

21 A. I thought I had.

22 The public disclosure, this is a  
23 summary of the public disclosure from the  
24 financial statements, it's not a verbatim  
25 restatement of that disclosure, it's worded

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2 differently. For example, they refer to  
3 strategic partners in the public disclosure.  
4 I don't believe they refer to LDCs by that  
5 name. Paragraph 18, where it says, Within  
6 that public disclosure, what follows that is  
7 someone else's description of what was  
8 actually said in the disclosure. It's not  
9 verbatim.

10 Q. That someone else is the Securities  
11 and Exchange Commission, correct?

12 A. Yes.

13 Q. It is the Securities and Exchange  
14 Commission that used the term shell  
15 companies?

16 A. In this document, yes.

17 Q. And you have provided your  
18 understanding of what the SEC meant by the  
19 term shell companies.

20 Now, do you have any facts to  
21 believe that the SEC got it wrong, that the  
22 LDCs were, in fact, more than little more  
23 than shell companies?

24 A. I have an understanding that the  
25 LDCs were more than what one might infer from

24 (Pages 90 to 93)

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2 the use of that term here.

3 Q. Where does that understanding come  
4 from?

5 A. It probably comes from the  
6 documents that I reviewed or it may have come  
7 from the complaint that I reviewed, that set  
8 forth what purported to be facts and may or  
9 may not have been facts. That's probably  
10 where it came from.

11 Q. Now, you said that generally  
12 accepted accounting principles does not  
13 define shell companies, correct?

14 A. That's correct.

15 Q. Does generally accepted accounting  
16 principles define Wednesday?

17 MR. BUTLER: Objection to form.

18 A. Not to my knowledge.

19 Q. Do you think that there is -- do  
20 you think that it is, that all terms that  
21 accountants use are defined in GAAP?

22 A. I think that technical terms that  
23 could lead to different definitions or  
24 different interpretations or at least  
25 critical terms, many of those terms,

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2 certainly not all of them have been defined  
3 in GAAP.

4 GAAP does contain several  
5 definitions of what they mean and some of  
6 those definitions are very complicated, but,  
7 yes.

8 THE VIDEOGRAPHER: We are going off  
9 the record. This is the end of tape 1.

10 The time is 11:23.

11 (Recess.)

12 THE VIDEOGRAPHER: We are going  
13 back on the record. This is tape No. 2.

14 The time is 11:35.

15 MR. HARRIS: Could you read back  
16 the last question and answer.

17 (Record read.)

18 Q. Having had an opportunity to review  
19 the statements by the SEC in Larue Exhibit 3,  
20 is there anything in there that causes you to  
21 change any of your opinions in this matter?

22 A. No, sir.

23 Q. Mr. Larue, when were you retained  
24 in this matter?

25 A. I don't recall. It was in spring

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2 of 2006, sometime in late -- I don't recall,  
3 April, May, possibly.

4 Q. And do you have -- can you  
5 approximate the amount of time that you spent  
6 from the time that you were retained until  
7 January 5, 2007 working on this matter?

8 A. Three hundred hours. Probably  
9 more.

10 Q. Mr. Larue, did anyone assist you  
11 with regard to the work that you did in this  
12 case?

13 A. Yes, sir.

14 Q. And who was that?

15 A. As I've indicated in my report,  
16 Cornerstone Research Associates assisted me  
17 with this report.

18 Q. Did anyone else assist with you  
19 this report, your report?

20 A. Of course, I had discussions with  
21 attorneys along the way, but in terms of  
22 assisting me with the report, Cornerstone  
23 Associates and individuals with Cornerstone  
24 Associates. I didn't hire anyone to help me,  
25 no.

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2 Q. Was there a particular person that  
3 you viewed as the point person at Cornerstone  
4 Associates?

5 A. That would be Amir Rosen.

6 Q. And had you worked with Mr. or Mrs.  
7 Rosen --

8 A. Mr.

9 Q. Had you worked with Mr. Rosen in  
10 the past?

11 A. No.

12 Q. Why did you decide to use Mr. Rosen  
13 at this point?

14 A. I didn't make that decision.  
15 Cornerstone Research Associates decided who  
16 they would assign to this case.

17 Q. Maybe I wasn't clear.

18 Had you worked with Cornerstone  
19 Associates previously?

20 A. I had not worked with them, no,  
21 sir.

22 Q. How did you decide to use  
23 Cornerstone Associates to assist you with  
24 this report?

25 MR. BUTLER: Do you mean

25 (Pages 94 to 97)

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1 D. Larue  
 2 Cornerstone Research, the company, or  
 3 associates at Cornerstone?  
 4 A. How did I decide?  
 5 Q. Yes.  
 6 A. Adele Turki contacted me on behalf  
 7 of counsel. They contacted me.  
 8 Q. I see.  
 9 What did they say to you?  
 10 A. They asked me if I would have an  
 11 interest in working with them on a case.  
 12 Q. And was that your first contact  
 13 with regard to this case?  
 14 A. With regard to this case, that's my  
 15 first contact with regard to this case, yes,  
 16 I believe it was, yes.  
 17 Let me back up. Just to be clear,  
 18 I had met Dr. Turki in January of 2006.  
 19 Q. Was the telephone call from Mr.  
 20 Turki -- Dr. Turki, I'm sorry -- the first  
 21 exposure you had to this matter?  
 22 A. To this matter?  
 23 Q. Yes.  
 24 A. Probably not.  
 25 Q. You were already retained?

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 2 A. No, no, sir. When I say probably  
 3 not, I mean I do read a lot. I do keep up  
 4 with things. I've got, certainly in my  
 5 capacity as chairman of the audit committee,  
 6 I read a great deal during the course of any  
 7 given week and, you know, one of the things  
 8 that I read are SEC publications.  
 9 So whether or not I heard of Dexia  
 10 or when I first learned of that, was that  
 11 before or after they contacted me, I can't  
 12 tell you.  
 13 Q. At the time that Dr. Turki  
 14 contacted you, you had not yet been retained  
 15 as an expert in this matter, correct?  
 16 A. That's correct.  
 17 Q. What did Cornerstone Research do  
 18 for you?  
 19 A. Well, they would review drafts of  
 20 my report and they would look over the drafts  
 21 of that report.  
 22 I assumed that they were verifying  
 23 the accuracy of the representations that I  
 24 made in terms of the applications of GAAP, I  
 25 assume they were doing that. They would

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 2 catch typographical errors and so forth.  
 3 Certainly in connection with  
 4 reviewing the KPMG work papers, they did a  
 5 comprehensive, or at least they did a search  
 6 of the KPMG database, as I've described in  
 7 this report, and drafted up a summary of  
 8 their findings for me to review.  
 9 Q. Did Cornerstone Research do  
 10 anything else with regard to your report?  
 11 A. I think that covers it.  
 12 Q. Who retained you as an expert in  
 13 this matter?  
 14 A. I believe I was retained by Mr.  
 15 Butler. That was communicated to me by Dr.  
 16 Turki.  
 17 Q. And what were you asked to do as an  
 18 expert in this matter?  
 19 A. I've indicated in my report what I  
 20 was asked to do.  
 21 Q. What was it?  
 22 A. I was asked to offer the following  
 23 information and opinions:  
 24 An overview of financial reporting  
 25 of U.S. generally accepted accounting

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1 D. Larue  
 2 principles and auditing principles as they  
 3 would apply to a public company such as  
 4 Lernout and Hauspie.  
 5 An overview of, in particular, of  
 6 the accounting for revenues from special  
 7 purpose entities based on factual assumptions  
 8 about specific transactions at issue in this  
 9 litigation.  
 10 I was asked to provide a  
 11 description of the accounting principles  
 12 under GAAP that were relevant to whether or  
 13 not -- whether and under what conditions L&H  
 14 could recognize revenue from these  
 15 transactions.  
 16 An opinion as to whether plaintiffs  
 17 are correct in asserting that L&H's revenue  
 18 recognition related to these transactions was  
 19 clearly improper under then existing GAAP  
 20 based on the loans made by Artesia.  
 21 An opinion as to whether, to an  
 22 outside observer, could determine L&H's  
 23 accounting treatment for these transaction  
 24 based on a review of public filings and press  
 25 releases.

26 (Pages 98 to 101)

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An opinion based on a review of the documents produced in this litigation from the files of L&H as auditor KPMG as to whether KPMG was misled by the loan documentation prepared by Artesia in connection with these transactions and an opinion as to whether the reasons given by L&H's audit committee for announcing a restatement of 373 million in L&H revenue are the same as those alleged by plaintiffs in this case.

I was also asked to provide a description of the various ways in which, according to plaintiffs, L&H inflated its publicly reported revenue pursuant to an alleged scheme to defraud and an estimate of the relative size of Artesia's role in that alleged scheme.

Q. Let the record reflect you were reading from your report, is that correct?

A. Yes, sir.

Q. Did you, as you sit here today, do you have an understanding of why you were asked to do what you've just read?

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identify them by paragraph?

A. Paragraphs A and B, for the most part, provide a background for the opinions and descriptions that I've listed in paragraph C and I believe that these relate to plaintiff's assertions or expected plaintiff assertions.

Possibly also D.

Q. Okay. Possibly also D is background or relates to plaintiff's assertions?

MR. BUTLER: Object to form.

A. I don't know.

Q. When you say, plaintiffs, who do you mean?

A. At the time I prepared this report as a non-attorney, my understanding is that the plaintiffs were the individuals indicated on the cover of my expert witness report and my rebuttal report.

Q. And at the time you prepared your report, did you understand that all of the plaintiffs made identical assertions?

A. I don't know if they did or not.

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A. My understanding is that this was in connection with a civil suit brought by certain individuals against Dexia as successor to Artesia.

Q. Do you have any understanding as to whether or not any of what you were asked to do relates in any way to that civil suit?

A. Yes, I assume that the opinions expressed in this report relate to plaintiff's assertions or expected assertions in connection with that suit.

Q. And so your understanding of the relationship between your opinions and how it relates to the civil matter is your assumption about plaintiff's assertions, correct?

MR. BUTLER: Objection to form.

Can I hear that question again.

(Record read.)

A. Not all of these things that I've listed relate to plaintiff's assertions, but some of them do.

Q. Which relate to plaintiff's assertion and which do not and can you

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I'm not an attorney. I don't know how these kinds of cases are really conducted.

Excuse me, if I can clarify my answer. I will tell you, as a non-attorney, it has always been my correct or incorrect understanding that these cases were going to be litigated together and tried together, so I would assume that the assertions would be made in common for all four groups.

I may be wrong about that, but I think that was my assumption if I ever took the time to think about it.

Q. From reviewing your report, I understood that you reviewed the assertions of the class plaintiffs, is that correct?

A. You'll have to be clear. I don't know what you mean by class plaintiffs.

Are you referring to the class -- are you referring to section 5?

Q. Let's go to -- let me mark as Larue Exhibit 4, a copy of your report.

(Copy of report of David Larue marked Larue Exhibit 4 for identification.)

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